

WO

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Rosalba Ruano et al., ) No. CV-24-03271-PHX-SPL  
Plaintiffs, )  
vs. )  
Burlington Coat Factory Direct )  
Corporation et al., )  
Defendants. )  
ORDER

Before the Court is Plaintiffs' Motion to Remand (Doc. 11), Defendants' Response (Doc. 13), and Plaintiffs' Reply (Doc. 15). For the following reasons, the Court will grant the Motion and remand to state court.<sup>1</sup>

## I. BACKGROUND

On June 4, 2022, Plaintiff Rosalba Ruano allegedly slipped and fell, injuring herself, in the women’s restroom at Defendant Burlington Coat Factory Direct Corporation’s Mesa, Arizona store. (Doc. 1-3 at 4). Plaintiffs filed their suit in Maricopa County Superior Court. (Doc. 1). On July 30, 2024, Plaintiffs filed their First Amended Complaint (“FAC”), the operative Complaint in this case, in which Plaintiffs bring a claim for negligence and seek damages for their medical expenses and the value of Plaintiffs’ “past, present, and future pain, discomfort, suffering, anxiety, loss of love and affection, loss of enjoyment of life,

<sup>1</sup> Because it would not assist in resolution of the instant issues, the Court finds the pending motions are suitable for decision without oral argument. *See* LRCiv. 7.2(f); Fed. R. Civ. P. 78(b); *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998).

1 and loss of consortium” in an amount to be proven at trial. (Doc. 1-3 at 4–5). The FAC  
2 asserts that the damages sought exceed \$50,000. (*Id.* at 3).

3 On November 21, 2024, Defendants removed the case to federal court pursuant to  
4 28 U.S.C. §§ 1332, 1441, and 1446. (Doc. 1) Defendants’ removal notice alleges that  
5 during a telephonic meeting on October 24, 2024, “Plaintiffs’ counsel confirmed that  
6 Plaintiffs are seeking damages in excess of \$200,000.00.” (Doc. 1 at 3). On December 20,  
7 2024, Plaintiffs moved to remand this action to Maricopa County Superior Court for lack  
8 of subject matter jurisdiction. (Doc. 11).

## 9 **II. LEGAL STANDARD**

10 Federal courts may exercise removal jurisdiction over a case only if subject-matter  
11 jurisdiction exists. 28 U.S.C. § 1441(a); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116–  
12 17 (9th Cir. 2004). The removing party bears the burden of establishing subject-matter  
13 jurisdiction as a basis for removal by a preponderance of the evidence. *Id.* at 1117; *Emrich*  
14 *v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988). To satisfy this burden under  
15 28 U.S.C. § 1441, the removing party must demonstrate that jurisdiction existed at the time  
16 of removal. *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009). There is a  
17 “strong presumption against removal jurisdiction,” and such jurisdiction “must be rejected  
18 if there is any doubt as to the right of removal in the first instance.” *Geographic*  
19 *Expeditions, Inc. v. Est. of Lhotka ex rel. Lhotka*, 599 F.3d 1102, 1107 (9th Cir. 2010)  
20 (internal quotation marks and citation omitted).

21 Diversity jurisdiction exists when the amount in controversy exceeds \$75,000 and  
22 the case is between citizens of different states. *See* 28 U.S.C. § 1332(a). In a situation where  
23 the amount in controversy is unclear from the face of a state-court complaint, “[t]he  
24 removing defendant bears the burden of establishing, by a preponderance of the evidence,  
25 that the amount in controversy exceeds the jurisdictional amount” by providing “evidence  
26 establishing that it is ‘more likely than not’ that the amount in controversy exceeds that  
27 amount.” *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403–04 (9th Cir. 1996). The  
28 amount in controversy is “the amount at stake in the underlying litigation,” including

1 compensatory damages, punitive damages, and attorneys' fees awards under fee-shifting  
2 statutes, but excluding interests and costs. *Gonzales v. CarMax Auto Superstores, LLC*,  
3 840 F.3d 644, 648–49 (9th Cir. 2016). A court may look outside the face of the complaint  
4 to determine the amount in controversy when it is not stated with specificity in the  
5 complaint. *Valdez*, 372 F.3d at 1117. This means that courts may consider allegations made  
6 in the notice of removal as well as “summary-judgment-type evidence.” *Id.* (internal  
7 quotation marks omitted).

8 Typically, the removing party must file the notice of removal within 30 days after  
9 receipt of a copy of the “initial pleading” giving rise to federal jurisdiction. *See* 28 U.S.C.  
10 § 1446(b). Alternatively, under § 1446(b)(3),

11 if the case stated by the initial pleading is not removable, a  
12 notice of removal may be filed within 30 days after receipt by  
13 the defendant, through service or otherwise, of a copy of an  
14 amended pleading, motion, order or other paper from which it  
15 may first be ascertained that the case is one which is or has  
16 become removable.

17 28 U.S.C. § 1446(b)(3). “Generally, the ‘order or other paper’ requirement of § 1446(b)  
18 applies only to documents generated within the state court litigation.” *Gonzales v. City of*  
*Peoria*, No. CV2100726PHXMTLMHB, 2021 WL 2389892, at \*1 n.2 (D. Ariz. June 11,  
2021).

### 19 III. DISCUSSION

20 Plaintiffs argue that remand is warranted because the Defendants’ removal was  
21 untimely and procedurally defective. (Doc. 11 at 3–4). Specifically, Plaintiffs argue that  
22 Defendants cannot remove the case pursuant to 28 U.S.C. § 1446(b)(3), because  
23 Defendants point to the October 24, 2024 telephone call, rather than “a copy of an amended  
24 pleading, motion, order or other paper” as the means by which they first ascertained that  
25 the case could be removed. (Doc. 11 at 3). On the telephone call, Plaintiffs allegedly  
26 proposed a \$200,000.00 settlement. (Docs. 11 at 2; 13 at 2). As to the actual damages  
27 sought, Defendants argue that Plaintiff has demonstrated \$42,703.85 in medical bills and  
28 that those bills continue to accrue. (Docs. 13 at 2).

1        Defendants do not identify, and this Court is unaware of, any case in which a  
 2 telephonic settlement offer qualifies as an “other paper” under § 1446(b)(3) triggering an  
 3 extended removal period. *See generally Pontiero v. GEICO Gen. Ins. Co.*, No.  
 4 EDCV171125JGBDTBX, 2017 WL 3475666, at \*4 (C.D. Cal. Aug. 14, 2017) (finding  
 5 that a phone conversation between the parties discussing punitive damages could not  
 6 trigger the removal period “because an oral statement is not an ‘other paper’ indicating that  
 7 the case is removable”). Instead, in their Response, Defendants point to the parties’ Joint  
 8 Report filed in state court, which was a product of the October 24, 2024 telephone  
 9 conference, as sufficient to meet the “other paper” requirement. (Doc. 13 at 2). The Joint  
 10 Report makes no mention of any estimation of damages nor settlement demands. (Doc. 1-  
 11 7 at 23–26). Defendants argue that the Joint Report’s mention of the case’s redesignation  
 12 under Tier II discovery—which applies to Arizona state court matters seeking damages in  
 13 excess of \$50,000—triggers removal § 1446(b)(3). (Doc. 13 at 3). However, Plaintiffs’  
 14 FAC, filed on July 30, 2024, reveals that while Plaintiffs initially proposed that the case  
 15 was subject to Tier I discovery, Plaintiffs were clear that “the damages sought exceed  
 16 \$50,000.” (Doc. 1-3 at 3). Thus, the Joint Report would not provide any “newly discovered  
 17 facts” sufficient to support a successive notice of removal. *Griffith v. Christenson  
 18 Translease Co. Inc.*, No. CV-24-8121-PCT-JFM, 2024 WL 3678568, at \*1 (D. Ariz. July  
 19 17, 2024), *report and recommendation adopted*, No. CV-24-08121-PCT-DJH, 2024 WL  
 20 3676850 (D. Ariz. Aug. 6, 2024).

21        Moreover, Defendants have not demonstrated that the amount in controversy  
 22 exceeds \$75,000 in this case. An amount in controversy of at least \$50,000 does not meet  
 23 the requisite threshold, and the mere possibility that actual damages may at some point  
 24 surpass the threshold is not enough to warrant removal under § 1446(b)(3). *See Dietrich v.  
 25 Boeing Co.*, 14 F.4th 1089, 1091 (9th Cir. 2021) (holding that a subsequently ascertainable  
 26 ground for removal pursuant to § 1446(b)(3) must be “unequivocally clear and certain.”).

27        **IV. CONCLUSION**

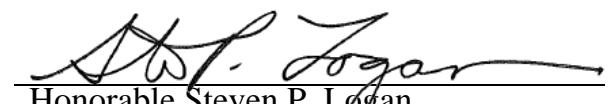
28        All told, Defendants failed to timely remove this action or show that an extended

1 removal period pursuant to 28 U.S.C. § 1446(b)(3) is warranted in this case. Additionally,  
2 Defendants failed to meet their burden to demonstrate by a *preponderance* of the evidence  
3 that the case meets the jurisdictional threshold. The Court cannot conclude that it is more  
4 likely than not that the amount in controversy is greater than \$75,000. Accordingly,

5 **IT IS ORDERED** that Plaintiffs' Motion to Remand (Doc. 11) is **granted**.

6 **IT IS FURTHER ORDERED** that the Clerk of Court shall remand this action to  
7 the Maricopa County Superior Court and **terminate** this case.

8 Dated this 4th day of February, 2025.

9  
10   
11 Honorable Steven P. Logan  
12 United States District Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28